

UNITED STATES OF AMERICA,
Plaintiff,

vs.

KEITH ALAN FRANKLIN,
Defendant,
and

BLUE RIDGE GLASS INC.,
Garnishee.

This matter is before the court on the answer of the Garnishee Blue Ridge Glass Inc. (Doc. 88), the Government's Motion for Order of Continuing Garnishment (Doc. 89), and the Government's Amended Motion for Order of Continuing Garnishment (Doc. 90).

A criminal Judgment was filed against Defendant on August 19, 2015. Doc. 51. As part of that Judgment, Defendant was ordered to pay an assessment of \$100.00 and restitution of \$475,000.00. *Id.*

On April 26, 2022, the court entered a Writ of Continuing Garnishment (“Writ”) (Doc. 85) to the Garnishee, Blue Ridge Glass Inc. Defendant received the Writ on April 30, 2022, and the Garnishee received the Writ on May 2, 2022.

The Garnishee filed an Answer on May 26, 2022 stating that at the time of the service of the Writ, Defendant was employed by the Garnishee and describing Defendant's wages. Doc. 88. In an accompanying Certificate of Service signed on May 19, 2022, the Garnishee's representative stated that a copy of the Answer had been sent to Defendant by first-class mail. Id.

On June 23, 2022, the Government filed its Motion for Order of Continuing Garnishment and on June 24, 2022, the Government filed its Amended Motion for Order of Continuing Garnishment. Doc. 89, 90.

In the Motions, the Government states that Defendant has not requested a hearing and that the statutory time to do so has elapsed. The Government in its Amended Motion contends that Defendant should be presumed to have received the Answer three days after it was served, such that Defendant's deadline to object was June 13, 2022.

The time for Defendant to respond to the Government's Motions has expired and Defendant has filed no objection or other response to them.

Under these circumstances, the undersigned is persuaded that Defendant has received sufficient notice of the Garnishee's Answer and has been given an appropriate opportunity to respond. See generally, Klein v. Huseby, No. 97-1078, 1997 WL 686036, at *1 (7th Cir. Oct. 31, 1997) ("By failing to timely file a response to Huseby's motions or to receive an extension, Klein waived his right to respond to the motions"); Gordon v. Cathey, 3:13-CV-

229-FDW-DCK, 2013 WL 5561642, at *3 (W.D.N.C. Oct. 8, 2013) (noting that court may consider motion to dismiss unopposed when party fails to respond within time allotted and dismissing case).

IT IS THEREFORE ORDERED THAT:

1. The Government's Motion for Order of Continuing Garnishment (Doc. 89) is **DENIED AS MOOT**.
2. The Government's Amended Motion for Order of Continuing Garnishment (Doc. 90) is **GRANTED**, and an Order of Continuing Garnishment is hereby **ENTERED** in the amount of \$149,555.48 as computed through April 25, 2022.
3. The Garnishee **SHALL PAY** the United States up to the lesser of (1) twenty-five percent of Defendant's disposable earnings which remain after all deductions required by law have been withheld, or (2) the amount by which Defendant's disposable earnings for each week exceed 30 times the federal minimum wage. See 15 U.S.C. § 1673(a). The Garnishee shall continue said payments until the debt is paid in full or until the Garnishee no longer has custody, possession or control of any property belonging to Defendant or until further Order of this Court. Payments should be made payable to the United States Clerk of Court and mailed to:

Clerk of the United States District Court
401 West Trade Street
Charlotte, North Carolina 28202

To ensure that each payment is credited properly, the following should be included on each check: Court Number DNCW2:14CR7.

4. The Garnishee is **DIRECTED** to advise the Government if Defendant's employment is terminated at any time by the Garnishee or Defendant.

Signed: July 13, 2022

A handwritten signature in black ink, reading "W. Carleton Metcalf", written over a horizontal line.

W. Carleton Metcalf
United States Magistrate Judge

